IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10479 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BACHUJI BHALAJI MAKWANA

Appearance:

1. Special Civil Application No. 10479 of 1999

MR ND GOHIL A.G.P. for Petitioner No. 1-2

MR TH SOMPURA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 27/08/2004

ORAL JUDGEMENT

1.0. The petitioners by way of this petition have challenged the judgment and award of the Labour Court, dated 29th May, 1999 in Reference [L.C.A.] No. 894 of

1991 whereby, the Labour Court, Ahmedabad has directed the petitioners to reinstate the respondent-workmen on their original post with continuity of service, with 25% backwages from the date of termination till the realization of amount.

2.0. The short facts of the case as they emerge from the record of the petition are that the respondent-workmen at the relevant time were working as labourers with the petitioners since several years. It is the case of the respondent-workmen that though they are working since several years, they were neither issued attendance card, wage slip etc., nor they were allowed to encash the leave. It is further the say of the respondent-workmen that on demand for the aforesaid benefits, the petitioners on 27th October, 1990 orally terminated their services. It is further the say of the respondent-workmen that though they have worked for more than 240 days, they were not paid retrenchment compensation etc.

2.1. In view of that the respondent-workmen raised industrial dispute, which was ultimately referred to the Labour Court, Ahmedabad for adjudication being Reference [L.C.A.] No.894 of 1991, whereby the Labour Court after appreciating the material produced before it partly allowed the Reference with the aforesaid directions. Hence, this petition.

2.2. Mr. Gohil learned A.G.P. appearing for the petitioners submitted that the Labour Court has committed error in granting reinstatement in view of the fact that now the project work is over and the petitioners were engaged only for a particular project work on daily wage basis. He submitted that while considering this contention the Labour Court has observed as under :-

> "As soon as the work of this project is over, there was no need to continue both these workers and they were terminated since the project work was over. The same aspect is not found in defence by way of reply at Exh.10 and 14."

3.0. I have heard the learned advocates for the respective parties and have perused the relevant record. It appears that the Labour Court while appreciating the material produced before it has taken into consideration complaint nos.4338/99 and 4309/99 dated 16th November, 1990 which pertain to the nature of work, where the length of service stated is three years and the date of

termination is 27th October, 1990. Therefore, it clearly proves that the respondent-workmen were appointed prior to 1st October, 1988. The Labour Court, therefore, observed that the respondent-workmen have not completed five years and also that they have not worked for 240 days in a year. Further, since the respondent-workmen have worked for a longer period and since no compensation was paid, the Labour Court has granted reinstatement. Thus, the award of the Labour Court is in consonance with the provisions of the Industrial Disputes Act inasmuch as in view of the provisions of Section 25-H, daily wagers are entitled to be reinstated in service on their original post.

3.1. However, the Labour Court was not justified in granting backwages, since the same was granted as a benefit of doubt to the respondents. Therefore, in my view, the order with regard to 25% backwages is required to be quashed and set aside.

4.0. Pursuant to the order of this Court, the respondents have filed affidavit-in-reply and they were granted benefits under Section 17-B of the Industrial Disputes Act. In view of the aforesaid order, order regarding reinstatement is required to be confirmed.

4.1. Lastly, Mr. Gohil contended that the respondent-workmen were appointed for a particular project work. But as stated hereinabove, the Labour Court has specifically given finding that the said contention was not raised in Exh.10 and 14. Therefore, in my view, the finding of the Labour Court is correct and the same is not required to be disturbed in any manner.

4.2. Mr. Gohil has placed reliance on the decision of the Apex Court in the case of Delhi Development Horticulture Employees' Union v. Delhi Development Administration reported in A.I.R. S.C. p.789, wherein the Apex Court has held that persons employed under the Scheme cannot claim regularization merely because they have put in more than 240 days service.

4.3. However, in the present case, the respondent-workmen have not claimed regularization, but they have claimed reinstatement in view of the provisions of the Industrial Disputes Act. Therefore, in view of the facts narrated hereinabove and since the petitioners have not followed the procedure before retrenching the respondent-workmen and have also not followed the provisions of the Industrial Disputes Act, the order of

reinstatement is justified and no order of regularization was passed by the Labour Court. Therefore the said decision will not apply to the facts of the present case.

4.4. As against that Mr. Sompura learned advocate appearing for the respondent-workmen has relied upon the decision of the Apex Court in the case of S.M. Niljakar & Ors v. Telecom District Manager reported in (2003) 4 S.C.C. p.27, wherein it has been held that employment must be shown to be under a contract which stipulates that it would come to an end with the expiry of the project or scheme and the workers must be shown to have been made aware of such stipulation at the commencement of their employment. Mere proof of employment of casual workers or daily wagers in a project or scheme and termination of their services on the project or the scheme coming to an end is not enough to attract the exception sub-cl. (bb) being inapplicable.

4.5. Thus, in my opinion, even if the case of the petitioners is accepted in view of the aforesaid decision, the case of retrenchment and not following the procedure of the Industrial Disputes Act the Labour Court was justified in awarding the reinstatement and it is required to be upheld qua reinstatement.

5.0. Therefore, in the premises aforesaid, the petition is partly allowed. The award with regard to reinstatement is confirmed and award with regard to backwages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/